

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING
Natural Resources Board Order AM-19-13

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Wis. Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing to consider modification of requirements under subch. III of ch. NR 446, Wis. Adm. Code, related to the control of mercury emitted by coal-fired electric generating units on the date and at the time and location listed below.

Hearing Information

Date and Time

November 12, 2013
10:00 am

Location

Natural Resources State Office Building
Room 713
101 South Webster Street
Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI 53703; by email to Robert.Eckdale@wisconsin.gov ; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and the Fiscal Estimate and Economic Impact Analysis

The proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be viewed and downloaded from the Administrative Rules System Website at <https://health.wisconsin.gov/admrules/public/Rmo?nRmold=14923>. If you do not have internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate and economic impact analysis, may be obtained free of charge by contacting Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St., Madison, WI, 53703, or by calling (608) 266-2856.

Submitting Comments

Comments on the proposed rule must be received on or before November 14, 2013. Written comments may be submitted by U.S. mail, fax, email, or through the internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Tom Karman
Department of Natural Resources
Bureau of Air Management (AM/7)
101 S. Webster St., Madison, WI 53703

Phone: (608) 264-8856

Fax: (608) 267-0560

E-mail: Thomas.Karman@Wisconsin.gov

Internet: Use the Administrative Rules System Website (requires registration) at
<https://health.wisconsin.gov/admrules/public/Rmo?nRmold=14923>

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Sections 227.11 (2) (a), 285.11 (9), *Wis. Stats.*

Statutory authority: Sections 227.11 (2) (a), 285.11 (9), *Wis. Stats.*

Explanation of agency authority: Wisconsin statute s. 227.11 (2) (a) authorizes the Department to promulgate rules interpreting the provisions of any statutes enforced or administered by it. Wisconsin statute s. 285.11 (9) authorizes the Department to prepare and adopt minimum standards for the control of mercury emissions.

Related statutes or rules: This proposed rulemaking affects control of mercury emissions as required under subchs. II and III of ch. NR 446, *Wis. Adm. Code*. These rules were established in 2008 under authority of s. 285.11 (9), *Wis. Stats.*, which in turn refers to requirements under s. 285.27 (2) (b), *Wis. Stats.* The latter statute allows promulgation of state emissions limitations for hazardous pollutants only if there is a finding that control of emissions is needed to protect human health and welfare. A health and welfare finding was made for the 2008 mercury rulemaking process.

Wisconsin statute s. 285.27 (2) (d) specifies that sources of hazardous air pollutants are exempt from state rule requirements when emissions are regulated by federal rules promulgated under section 112 of the Clean Air Act (CAA). This means that electric generating utilities (EGUs) will be exempt from requirements under subchs. II and III of ch. NR 446, *Wis. Adm. Code*, when their mercury emissions are regulated under the federal Mercury and Air Toxics Standards (MATS) and Industrial, Commercial and Institutional (ICI) Boiler rules.

Plain language analysis: Mercury emitted by coal-fired EGUs is regulated by the state under subchs. II and III of ch. NR 446, *Wis. Adm. Code*. This administrative code is commonly referred to as the “state mercury rule” with subchapter II referred to as phase 1 and subchapter III as phase 2. The action proposed in this Board Order will delay the initial compliance date for emission reductions required under phase 2 of the state mercury rule until April 16, 2016.

Under phase 2 of the original state mercury rule, 31 EGUs are required to achieve 90 percent control of mercury by January 1, 2015. Currently, these EGUs are subject to a 40 percent control requirement under phase 1 of the state mercury rule. Phase 2 of the state mercury rule will also require four smaller EGUs not affected under phase 1 to begin operating best available control technology (BACT) by January 1, 2015.

The same coal-fired EGUs subject to the state mercury rule will also be subject to mercury emission limits under one of two recently promulgated federal rules: the MATS rule or the ICI Boiler rule. EGUs subject to the MATS rule must demonstrate compliance by April 16, 2015. The EGUs subject to the ICI Boiler rule must demonstrate compliance by January 31, 2016. However, individual EGUs may request a one-year extension to any federal rule regulating hazardous air pollutant emissions as allowed under section 112 of the Clean Air Act.

Under the current schedule of compliance dates, EGUs will be subject to phase 2 of the state rule three and a half months before compliance is required under the MATS rule and thirteen months before compliance is required under the ICI Boiler rule. However, according to s. 285.27 (2) (d), *Wis. Stats.*, EGUs will be exempt from state mercury rule requirements when mercury emissions are regulated under the federal rules. Therefore, under the current compliance schedules, EGUs would comply with phase 2 of the state mercury rule for only a short period of time.

The Department has concluded that requiring compliance with phase 2 of the state mercury rule for a short period of time is not warranted for a number of reasons. First, state law directs that mercury emissions will be regulated in the long-term by any promulgated federal requirement. Second, the Department believes that meeting requirements of both the state and federal rules adds complexity, cost, and compliance burden for the affected EGUs. Lastly, with the federal rules becoming effective on April 16, 2015 and January 31, 2016, and the state rule no longer applicable after those dates, delaying the state mercury rule requirements will not result in higher levels of mercury emissions compared to implementing only the state rule.

Therefore, the Department is proposing to delay the compliance date for phase 2 of the state mercury rule from January 1, 2015 to April 16, 2016. The Department is proposing this date to accommodate individual EGUs subject to the MATS rule that may require a one-year extension. It is the Department's opinion that EGUs affected by the ICI Boiler rule will not request a one-year extension and therefore will not require the compliance date for phase 2 of the state mercury rule to be one year after the ICI Boiler rule's compliance date.

In summary, this rule change will achieve the following objectives:

- Allows EGUs to comply with only the federal rules and not phase 2 of the state mercury rule at this time, thus simplifying administrative requirements, compliance planning, and installation of equipment which will avoid undue cost.
- Maintains the existing state mercury rule requirement for 40 percent mercury control, as provided under subch. II of ch. NR 446, *Wis. Adm. Code*, until the affected EGUs regulate mercury emissions in accordance with the federal standards.
- Maintains state mercury rule phase 2 emission standards, under subch. III of ch. NR 446, *Wis. Adm. Code*, in the event that the federal rules are delayed or rescinded. Maintaining the state mercury rule in a backup position will ensure that the state health and welfare finding requiring mercury control is fulfilled within a practical time-frame.
- Accommodates EGUs that may require a one-year extension to the MATS rule compliance date of April 16, 2015 as allowed under section 112 of the CAA. As stated above, it is the Department's opinion that EGUs will not require an extension in meeting requirements of the ICI Boiler rule, therefore the compliance date in this rulemaking is only extended to April 16, 2016 in order to address a possible extension that may be requested by EGUs affected by the MATS rule.

Information and analysis supporting this rule change are provided in the report "Wisconsin's State Mercury Air Emission Rule". This report was presented to the Natural Resources Board on May 22, 2013. At that time, the Board approved the report's recommendation to extend the compliance date for meeting requirements under subch. III of ch. NR 446, *Wis. Adm. Code* to April 16, 2016.

Summary and comparison with existing and proposed federal regulations: As discussed in Item 5 of this Board Order, mercury emitted by 35 coal-fired boilers will be regulated under phase 2 of the state mercury rule beginning January 1, 2015. Mercury emission standards will apply to these same EGUs under either the federal MATS beginning on April 16, 2015 or the ICI Boiler rule beginning on January 31, 2016. The resulting control and mercury emission levels anticipated under either the state or federal rules are summarized in the following table. Emissions are presented through 2021 in order to show the effects of delayed implementation of mercury reductions under the state mercury rule multi-pollutant compliance option. A detailed comparison of the state and federal rules is presented in the report provided to the Natural Resources Board on May 22, 2013. The information in the table shows that the state and federal rules are expected to achieve comparable mercury emission reductions.

Year	State Rule Compliance		Federal Rule Compliance	
	Percent Control	Remaining Hg Emissions (lbs.)	Percent Control	Remaining Hg Emissions (lbs.)
2015	83 – 87%	550 – 743	84 – 86%	584 – 663
2016	83 – 87%	550 – 743	87 – 89%	446 – 558
2021	89 – 92%	345 – 449	87 – 89%	446 – 558

Note: Percent control is measured from the baseline uncontrolled emissions of 4,275 pounds per year as determined under s. NR 446.06, *Wis. Adm. Code*. The baseline uncontrolled emissions are the average of uncontrolled emissions for 2002, 2003, and 2004.

Comparison of similar rules in adjacent states: The federal MATS and ICI Boiler rules will affect EGUs in adjacent states in the same manner as EGUs in Wisconsin. Like Wisconsin, some of these states also have existing state mercury emission standards in place. These states are responding in a variety of ways, as summarized in the following table.

State	Existing State Hg Rule (Y/N)	Response to Federal MATS
-------	------------------------------	--------------------------

Illinois	Yes	Have not considered state response to federal MATS in detail. Expect that sources will need to meet both state and federal regulations.
Michigan	Yes	Revising the state rule to be consistent with MATS.
Minnesota	Yes	Adopting federal MATS rule. Will also require compliance with more stringent state rule.
Iowa	No	No action at this time. Waiting for EPA's response to reconsideration of the MATS rule.

Summary of factual data and analytical methodologies: The Department reviewed all applicable state statutes and administrative code. The Department determined that affected EGUs will be exempt from state mercury rule requirements when mercury emissions are regulated under federal rules. This exemption from state requirements is provided under s. 285.27 (2) (d), *Wis. Stats.*

The Department evaluated mercury emission control levels and remaining emissions that are expected under full implementation of either the state mercury rule or the two federal rules. The Department determined that the current compliance date of the state mercury rule may result in undue compliance burden and cost even though mercury emissions, in the long-term, will be regulated under the current federal MATS and ICI Boiler rules. Therefore, the Department evaluated options to transition regulation of mercury emissions from under the state mercury rule to the federal rules in a manner consistent with the applicable statutes. The factual data and methodologies used to evaluate the state and federal mercury rule requirements are documented in the report presented to the Natural Resources Board on May 22, 2013 which can be accessed from the May 22, 2013 agenda on the Natural Resource Board's website.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis: One goal of the proposed rule change is to avoid undue regulatory cost. In accordance with s. 227.137, *Wis. Stats.*, the Department solicited information and advice from affected sources and stakeholders concerning the economic impacts of the proposed rule. The Department received comments from two affected utilities which supports the conclusion that the rule change will reduce compliance burden and cost. This information was considered in preparing the fiscal estimate and economic impact analysis.

Effect on small business: The proposed rule will only affect electric utilities generating electricity and will not affect small businesses.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, *Wis. Adm. Code*. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate and Economic Impact Analysis Summary

Fiscal Estimate:

1. Fiscal effect on state and local government: The proposed rule will not result in additional cost to state and local government. The proposed rule is intended to avoid additional compliance costs for coal-fired electric generating units. Manitowoc Public Utility, the one local government entity that is affected by the rule change, has commented that the proposed rule will reduce compliance burden and avoid additional costs.

2. Fiscal effect on the private sectors: The proposed rule is intended to avoid additional compliance costs to coal-fired electric generating units and therefore the private sector will incur no additional cost that is related to this rule change. The non-government electric utility companies affected by the rule change include Dairyland Power Cooperative, Wisconsin Power and Light, Wisconsin Public Service Corporation, We Energies and Xcel Energy. Xcel Energy and Dairyland Power Cooperative provided comments supporting the conclusion that the rule change will reduce compliance burden and avoid additional costs.

Economic Impact Analysis (EIA):

1. Summary of analysis under s. 227.137(4): The objective of the proposed rule change is to aid transition of mercury emission regulation from under state rule to federal rule and therein reduce potential compliance costs and burden. As a result, there is no increase in the costs incurred by affected EGUs and electric rate payers. Likewise, there is no negative impact on the state's economy.

2. Summary of revised analysis: The Department received comments from three affected EGUs which supports the original conclusion provided in the EIA that the rule change will reduce compliance burden and cost. No other comments were received.

3. Summary of report prepared by the Department of Administration (DOA) for purposes of s. 227.137(6), Wis. Stats.: A report from the DOA is not required by s. 227.137(6), Wis. Stats., for this proposed rule change.

Agency contact person:

Tom Karman
Department of Natural Resources
Bureau of Air Management (AM/7)
101 s Webster St, Madison, WI 53703

Phone: 608 264-8856
Fax: 608 267-0560
E-mail: Thomas.Karman@Wisconsin.gov

Dated at Madison, Wisconsin: October 8, 2013

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____/S/_____
Cathy Stepp, Secretary